

**C. Remarks/Arguments:**

Reconsideration of this application is respectfully requested. Upon entry of the amendments claims 29-41 will be pending. Claim 29 has been amended herewith to incorporate the limitations of claim 42, which is canceled herein without prejudice or disclaimer to being pursued in this or a later filed application. Claim 38 has been amended to delete the overlapping elements with claim 29 as currently amended herewith. No new matter has been added.

Applicants address the Examiner's rejections from the final Office Action mailed 01/04/10 below.

**Rejections under 35 USC § 102**

The Examiner has maintained the rejections of claims 29-41 as anticipated by Moens. Applicants traverse for the reasons already of record, but do not reiterate them here.

Notwithstanding, in an effort to expedite prosecution of this application, Applicants have amended claim 29 herewith to include the limitations of claim 42 – namely, wherein the polyester component of the powdered thermosetting composition is from 50 to 98 weight % of the total, and wherein the  $\beta$ -hydroxyalkylamide cross-linking agent component is from 1 to 10 weight % of the total. As the Examiner did not previously reject claim 42 for lack of novelty based on Moens, Applicants submit that claim 29 as amended is novel over Moens, as are claims 30-41 as presented herewith and which depend directly or indirectly therefrom.

Reconsideration and withdrawal of the rejection are respectfully requested.

### **Rejections under 35 USC § 103**

The Examiner maintained the rejections of claims 1-41 and rejects new claim 42 as obvious in view of Kaplan in combination with Moens. According to the Examiner, “it would have been obvious to a person of ordinary skill in the art [at the time of invention] to use Moens’s amorphous polymer in Kaplan’s applications in order to achieve good mechanical properties and excellent weatherability.” *See* final Office Action mailed 01/04/10 at page 8. Claim 42 has been canceled herewith. Accordingly, the rejection is moot with respect to claim 42 and should be withdrawn.

Applicants traverse the rejection for the reasons already of record – namely, that reliance on Moens to complete the teachings of Kaplan ignores the fact that, viewed as a whole, Moens requires a polyester composition having both an amorphous polyester and a semi-crystalline polyester (which is specifically excluded by the claimed invention). Reliance on Moens further ignores the fact that the reference specifically discourages the use of isophthalic acid-rich amorphous polyester compositions for use in powder coatings (such as that of the claimed invention) due to their “medicare [sic, mediocre] mechanical properties,” such as flexibility *See* Moens, col. 19, lines 10-16. *See also* Applicants’ paper filed September 17, 2009 at page 10.

Notwithstanding, and as described above, in an effort to expedite prosecution of this application, Applicants have amended claim 29 herewith to include the limitations of claim 42. Applicants concurrently submit the declaration of Luc Moens in support of the remarks and arguments presented herein.

Kaplan does not teach or suggest the claimed ratio of the carboxyl functional amorphous polyester or the  $\beta$ -hydroxyalkylamide cross-linking agent. First, Example 4 of Kaplan teaches that the amount of the  $\beta$ -hydroxyalkylamide cross-linking agent is above 10 weight % and that

the carboxyl functional polyester is rich in terephthalic acid. Second, Examples 5 and 6 of Kaplan teach that the amount of the carboxyl functional polyester is below 50 weight %.

Notably, these compositions do not even relate to those of the present invention as they are water or solvent based, rather than powder based. *See* Moens declaration at ¶ 6.

Moreover, and as Applicants have previously noted, Moens teaches away from the use of only amorphous carboxyl functional polyesters, which follows from a comparison between Examples 31 and 32 of Moens (column 19 and Table 2). The Examiner is requested to note the highly significant difference in reverse and direct impact between Examples 31 and 32 of Moens (< 10 kg/cm, using no linear chain aliphatic C4-C16 diols) vs. Examples 7-14 of the instant specification (> 60 kg/cm, using one or more linear chain aliphatic C4-C16 diols). *See* Moens declaration at ¶¶ 7-8.

Thus, one of skill in the art relying on the combination of Moens and Kaplan would have been led in a path divergent from that solved by the claimed invention. Furthermore, Moens would have been rendered unsatisfactory for its intended purpose, because Moens specifically discourages isophthalic acid rich amorphous polyester compositions for use in coatings due to their mediocre mechanical properties, such as flexibility. *See* Moens declaration at ¶ 7.

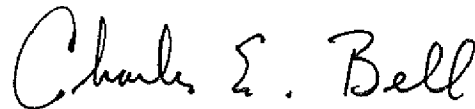
The claimed invention provides for coatings with outstanding flow and no pinholes, in combination with an excellent reverse and direct impact (*e.g.*, > 60 kg/cm) with the use of simple  $\beta$ -hydroxyalkylamide cross-linking agents and without the need for semi-crystalline polyesters. Such a result could not be expected in view of the teachings of Kaplan and Moens. *See* Moens declaration at ¶ 9. The  $\beta$ -hydroxyalkylamide cross-linking agent of Kaplan is of a very particular type (*i.e.*, custom designed co-polyester containing  $\beta$ -hydroxyalkylamide end groups), whereas the claimed invention allows the use of standard commercially available  $\beta$ -hydroxyalkylamide

cross-linking agents, such as PRIMID®, which are simple, small molecules not incorporated in a polyester backbone. *See* Moens declaration at ¶ 10.

For at least the foregoing reasons, Applicants submit that the claimed invention as demonstrated and evidenced by the examples and comparative examples of the specification unexpectedly provide a novel and non-obvious isophthalic-rich polyester having i) outstanding properties, ii) outstanding weatherability and iii) improved flexibility, and that such unexpected results should be fully considered in examining the merits of the claimed invention.

In view of the foregoing amendments, remarks, and declaration of Moens, Applicants respectfully request reconsideration and withdrawal of the rejections.

Respectfully submitted,



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